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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,235	06/28/2001	Lance W. Russell	10003532-1	8674

7590 08/25/2006

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EXAMINER

BILGRAMI, ASGHAR H

ART UNIT	PAPER NUMBER
	2143

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**SUPPLEMENTAL
Office Action Summary**

Application No.

09/895,235

Applicant(s)

RUSSELL, LANCE W.

Examiner

Asghar Bilgrami

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 August 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-9 and 11-29 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 and 11-29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 June 2001 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |



SUPPLEMENTAL DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
2. Claims 1 & (26-29) is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification it states that the network management module **proactively** launches migratory recovery modules in to the network.
3. Claims 11 & 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification it states “ (c) **after** initiating the recovery process, migrating from the current network node to a successive one.
4. The examiner advices the applicant to avoid incorporating assumed terminology in the claim language that is not clearly and definitively described in the specification.

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5. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification does not provide a clear description that if a network node is failed how can a migratory module get to that node to initiate the recovery process of that node.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 5 rejected under 35 U.S.C. 102(e) as being anticipated by Turek (U.S. 6,460,070)

7. As per claims 5 Turek disclosed a system for managing a plurality of distributed nodes of a network, comprising: a recovery modules configured to migrate from one network node to another, determine a status of a network, and initiate a recovery process on a failed network node (col.2, lines 65-67 & col.2, lines 1-46) wherein the recovery module is configured to determine the status of a network node in accordance with a heartbeat messaging protocol (col.2, lines 22-

46). Although Turek did not specifically mentioned a heartbeat messaging protocol to determine the status of a network node. However Turek did disclose collecting information about network conditions to include network node by the use of mobile software agents that that periodically check the network status information, which is an inherent function of a heartbeat messaging protocol.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-9, 11-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turek et al (U.S.6,460,070).

10. As per claims 1, 19 & 20 Turek disclosed a method for managing a plurality of distributed nodes of a network, comprising: a network management module that proactively launches migratory recovery modules into the network to detect failed ones of the network nodes; wherein each of the recovery modules is configured to migrate from one network to another, determine a respective status of each of the network nodes to which it has migrated, and initiate a recovery process on failed ones of the network nodes.(col.3, lines 48-64, col.1, lines 59-

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62, 65-67, col.2, lines 22-26, col.2, lines 1-3, col.2, lines 22-26 & col.5, lines 32-60). Although Turek did not explicitly uses the terminology “migratory recovery modules” as used by the applicant but instead Turek relates it as “mobile software agent” which perform the same task as the “migratory recovery modules”. At the time the invention was made it would have been obvious to one in the ordinary skill in the art at the time the invention was made to have used such terminology as used by the applicant to describe an entity that conducts fault analysis and correction of network nodes as described the applicant in the independent claim.

11. As per claim 11 Turek disclosed a method for managing a plurality of distributed nodes of a network, comprising: (a) on a current one of the network nodes, determining a status of the current network node; (b) in response to a determination that the current network node has failed, initiating a recovery process on the current network node; (c) after initiating the recovery process, migrating from the current network node to a successive one of the network nodes; and (d) repeating (a), (b), and (c) with the current network node corresponding to the successive network node for each of the nodes in the network. .(col.3, lines 48-64, col.1, lines 59-62, 65-67, col.2, lines 22-26, col.2, lines 1-3, col.2, lines 22-26 & col.5, lines 32-60). Although Turek did not explicitly uses the terminology “migratory recovery modules” as used by the applicant but instead Turek relates it as “mobile software agent” which perform the same task as the “migratory recovery modules”. At the time the invention was made it would have been obvious to one in the ordinary skill in the art at the time the invention was made to have used such terminology as used by the applicant to describe an entity that conducts fault analysis and correction of network nodes as described the applicant in the independent claim.

12. As per claims 2, 12, 21, 23, 24 & 25 Turek disclosed the system of claim 1, wherein at least one of the recovery module comprises a respective routing component for determining a next hop address from an origin network node to a destination network node (col.5, lines 32-60).

13. As per claims 3 & 13 Turek disclosed the system of claim 2, wherein the routing component is configured to determine the next hop address based upon a routing table stored at the origin network node (col.5, lines 32-60)

14. As per claims 4 & 14 Turek disclosed the system of claim 1, wherein at least one of the recovery module is configured to determine the status of a network node by sending an inter-process communication to a node process (col.3, lines 65-67, col.4, lines 1-12 & col.5, lines 32-60).

15. As per claim 15 Turek disclosed the method of claim 11, wherein the status of the network node is determined in accordance with a heartbeat messaging protocol

16. As per claims 6 & 16 Turek disclosed the system of claim 1, wherein each of the recovery module is configured to initiate a recovery process on a failed network node in accordance with a restart protocol (col.6, lines 23-59).

17. As per claims 7 & 17 Turek disclosed the system of claim 6, wherein each of the recovery module is configured to initiate a restart of a failed node process by transmitting a request to a process execution service operating on the failed network node (col.6, lines 23-59).

18. As per claims 8 & 18 Turek disclosed the system of claim 1, wherein each of the recovery module is configured to transmit a respective node status message to the network management module (col.2, lines 22-62).

19. As per claim 9 Turek disclosed the system of claim 8, wherein each of the node status messages comprises information obtained from a respective log file generated at a respective failed one of the network node (col.8, lines 58-67 & col.8, lines 1-9).

20. As per claim 22 Turek disclosed the system of claim 21, wherein the operating environment on each of the network nodes provides each of the recovery modules with access to status monitoring resources, recovery resources, and native operative system resources that are available at each of the network nodes (col.8, lines 39-52).

Claim Rejections - 35 USC § 103

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

22. Claims 26, 27, 28 & 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turek (U.S. 6,460,070) and Douik et al (U.S. 6,012,152).

23. As per claims 26, 27, 28 & 29 Turek disclosed the system of claim 1. However Turek did not explicitly disclose, wherein the network management module statistically identifies target ones of the network nodes to achieve a specified confidence level of network monitoring reliability, and proactively launches the recovery modules into the network by transmitting respective ones of the recovery modules to the identified target network nodes. In the same field of endeavor Douik disclosed wherein the network management module statistically identifies target ones of the network nodes to achieve a specified confidence level of network monitoring reliability, and proactively launches the recovery modules into the network by transmitting respective ones of the recovery modules to the identified target network nodes (col.11, lines 64-67 & col.12, lines 1-19).

It would have been obvious to one in the ordinary skill in the art at the time the invention was made to have incorporated statistical means for managing network by proactively launching recovery modules as disclosed by Douik in the method of managing plurality of nodes as disclosed by Turik

in order to automate and enhance the management of the network resulting in a trouble free and reliable network.

Response to Arguments

24. Applicant's arguments filed 7 April 2006 have been fully considered but they are not persuasive.

25. Applicant argued Turek does not show system proactively launching migratory recovery module as stated in the amended claim 1.

26. As to applicant's argument the examiner would like to point out the 112 rejection on line 2, 103 rejection on line 7 and 103 rejections on line 17 of this office action.

27. Applicant argued that Turek does not show mobile software agent being used to determine the status of a network node using heartbeat-messaging protocol as stated in the amended claim 5.

28. As to applicant arguments please see examiners rejection on line 17.

Conclusion

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The examiner can normally be reached on M-F, 8:00-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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